

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

GERALD CASH, et al.	:	CASE NO. 1:01CV753
Plaintiff,	:	(Judge Beckwith)
v.	:	CITY OF CINCINNATI'S RULE
HAMILTON COUNTY DEPARTMENT	:	37 MOTION TO DISMISS THE
OF ADULT PROBATION, et al.	:	CLAIMS OF PLAINTIFF ROCKY
Defendants.	:	ADKISSON AND
	:	MEMORANDUM IN SUPPORT
	:	

Pursuant to Rule 37 F.R.Civ.P., the City of Cincinnati moves the Court to dismiss the claims of plaintiff Rocky Adkisson. The City has waited months for Mr. Adkisson to be made available for deposition but was just informed by plaintiffs' counsel that Mr. Adkisson will not be produced for deposition. The City's counsel has in good faith attempted to secure Mr. Adkisson's attendance at his deposition and makes that certification in this motion. For that reason, and the City's inability to otherwise properly and fairly complete its discovery, the claims of plaintiff Adkisson should be dismissed. There is no need to file a motion to compel discovery because plaintiffs' counsel already affirmatively asserted that Mr. Adkisson would not be produced yet counsel also refused to voluntarily dismiss Mr. Adkisson's claims. The City cannot properly defend itself and file its motion for summary judgment without taking Mr. Adkisson's deposition. As authorized by Rule 37, the Court should dismiss the claims of plaintiff Adkisson.

Respectfully submitted,

JULIA L. MCNEIL (0043535)

s/ Richard Ganulin

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CERTIFICATE OF SERVICE

I hereby certify on July 10, 2006 a true and accurate copy of the foregoing City of Cincinnati's Rule 37 Motion to Dismiss the Claims of Plaintiff Rocky Adkisson and Memorandum in Support was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system and copies will be mailed to those parties by certified mailed who are not served via the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/Richard Ganulin

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Assistant City Solicitor